

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|---------------------------|--|---|--|
| Investigator: Valentina Concha-Toro | Team: Squad #15 | CCRB Case #: 201908621 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Friday, 09/20/2019 4:00 PM, Sunday, 09/22/2019 2:00 AM | Location of Incident: 19th Precinct Stationhouse | Precinct: 19 | 18 Mo. SOL 3/22/2021 | EO SOL 11/6/2021 | |
| Date/Time CV Reported Tue, 10/01/2019 10:10 AM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 10/01/2019 10:10 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. POM Eneorji Brooks | 14337 | 948696 | 019 PCT |
| 2. DTS Patrick Mullens | 3940 | 898139 | 019 PCT |
| 3. POM Donald Aridas | 30787 | 939882 | 019 PCT |
| 4. SGT James Gebhard | 01531 | 945752 | 019 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------------|-----------|--------|----------|
| 1. POM Christophe Peroni | 09037 | 957950 | 019 PCT |
| 2. SGT Elias Blunt | 00444 | 940971 | 019 PCT |
| 3. POF Keneisha Chase | 11528 | 965687 | 019 PCT |
| 4. POM Ka Fung | 03212 | 936626 | 019 PCT |
| 5. SGT Brendan Mcgurran | 03723 | 956081 | 019 PCT |
| 6. POM Michele Damato | 04324 | 953798 | 019 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.SGT James Gebhard | Discourtesy: On September 20, 2019, Sergeant James Gebhard spoke discourteously to § 87(2)(b) | |
| B.SGT James Gebhard | Abuse: On September 20, 2019, Sergeant James Gebhard forcibly removed § 87(2)(b) to the hospital. | |
| C.POM Donald Aridas | Force: On September 20, 2019, Police Officer Donald Aridas used a chokehold against § 87(2)(b) | |
| D.POM Donald Aridas | Force: On September 20, 2019, Police Officer Donald Aridas restricted § 87(2)(b)'s breathing. | |
| E.POM Donald Aridas | Force: On September 20, 2019, Police Officer Donald Aridas used a non-lethal restraining device on § 87(2)(b) | |
| F.POM Eneorji Brooks | Discourtesy: On September 22, 2019, Police Officer Eneorji Brooks spoke discourteously to § 87(2)(b) | |
| G.POM Eneorji Brooks | Force: On September 22, 2019, Police Officer Eneorji Brooks used physical force against § 87(2)(b) | |
| H.DTS Patrick Mullens | Force: On September 22, 2019, Detective Patrick Mullens used physical force against § 87(2)(b) | |

Case Summary

On October 1, 2019, § 87(2)(b) submitted this complaint with the CCRB over the phone on behalf of § 87(2)(b). On October 3, 2019, the CCRB received a duplicate complaint from IAB via log #19-35376.

At approximately 4:00 p.m. on September 20, 2019, § 87(2)(b) was in the 19th Precinct stationhouse in Manhattan. § 87(2)(b) was in a holding cell due to an arrest earlier in the day. Sgt. James Gebhard and PO Donald Aridas of the 19th Precinct were in the vicinity of the holding cell. Sgt. Gebhard allegedly cursed at § 87(2)(b) (**Allegation A: Discourtesy** – § 87(2)(g)). § 87(2)(b) urinated on the cell floor. Sgt. Gebhard determined § 87(2)(b) needed to be removed to the hospital and entered the holding cell (**Allegation B: Abuse of Authority** – § 87(2)(g)). § 87(2)(b) was placed in handcuffs, removed from inside the cell, and sat on the bench outside of the holding cell. PO Aridas allegedly grabbed the front of § 87(2)(b)'s neck and restricted his breathing (**Allegations C and D: Force** – § 87(2)(g)). PO Aridas placed a facemask on § 87(2)(b) (**Allegation E: Force** – § 87(2)(g)). § 87(2)(b) was removed to the hospital. On September 21, 2019, § 87(2)(b) was discharged from the hospital and returned to the 19th Precinct stationhouse. At approximately 2:00 a.m. on September 22, 2019, § 87(2)(b) was in the holding cell while Det. Patrick Mullens of the 19th Precinct was cleaning the cell. PO Eneorji Brooks of the 19th Precinct was in the vicinity of the holding cell area. There was a dispute regarding a soda bottle § 87(2)(b) had in the cell. PO Brooks allegedly cursed at § 87(2)(b) (**Allegation F: Discourtesy** – § 87(2)(g)). PO Brooks entered the holding cell and there was a physical incident involving both PO Brooks during which § 87(2)(b) was pushed into a cell wall and punched (**Allegation G: Force** – § 87(2)(g)). Det. Mullens allegedly punched § 87(2)(b) (**Allegation H: Force** – § 87(2)(g)). § 87(2)(b) was removed to the hospital.

Received one BWC video related to the incident (Board Review 01).

Findings and Recommendations

Allegation (A) Discourtesy: On September 20, 2019, Sergeant James Gebhard spoke discourteously to § 87(2)(b)

At approximately 9:55 a.m. on September 20, 2019, PO Aridas arrested § 87(2)(b) for violating an order of protection (Board Review 02). § 87(2)(b) was removed to the 19th Precinct stationhouse and lodged into a holding cell. The 19th Precinct holding cell is inside of a larger room equipped with a desk and computer which faces the holding cell gate where arrests are processed. Outside of the holding cell, along the gate, there is a bench. On the inside of the holding cell there is a bench on the far wall across from the cell gate.

Captured at 2:07 minutes into Sgt. Gebhard's BWC video (Board Review 01), § 87(2)(b) tells Sgt. Gebhard that he had cursed at him. Sgt. Gebhard denies that he cursed at § 87(2)(b).

When § 87(2)(b) provided his statement (Board Review 03), it was unknown that the complaint occurred over multiple days. § 87(2)(b)'s statement provided a narrative for an incident which occurred over the course of only one day, but through the investigation it was determined that § 87(2)(b) conflated incidents that occurred both on September 20, 2019 and September 22, 2019. There are portions of § 87(2)(b)'s statement which correspond to one incident date or the other.

§ 87(2)(b) stated that he had been in the 19th Precinct stationhouse holding cell for approximately 30 minutes to an hour. § 87(2)(b) was laying down on the bench inside of the holding cell and stood up. An officer outside of the holding cell told § 87(2)(b) to sit down and to be quiet. § 87(2)(b) asked the officer how it was that he was supposed to sit when he needed to leave because he did not do anything wrong. The officer approached the cell and cursed out § 87(2)(b). § 87(2)(b) was not able to provide any additional information about what curse words the officer used. § 87(2)(b)'s description of the officer was a male with a brownish to dark complexion and a heavy build, approximately 200-220 pounds, short black hair, wearing a uniform.

Sgt. Gebhard stated (Board Review 04) that at approximately 2:50 p.m. on September 20, 2019, he was in the stationhouse reviewing daily assignments, assigning patrol vehicles, and reviewing paperwork prior to going out on patrol. He did not know how long § 87(2)(b) had been inside of the holding cell. § 87(2)(b) told Sgt. Gebhard he knew where he lived and he was going to kill him, and also threatened to kill other officers who were in the stationhouse at the time. Sgt. Gebhard denied he used any profane language with § 87(2)(b) nor did he recall any officer having done so. Sgt. Gebhard is a 6'00" tall white male with brown hair and blue eyes (Board Review).

PO Aridas stated (Board Review 05) that he did not recall any other officer with him in the arrest processing room while he processed § 87(2)(b)'s arrest. PO Aridas had noted in his memo book that while § 87(2)(b) was in the holding cell and he was processing the arrest, § 87(2)(b) was "uncooperative." PO Aridas did not recall what § 87(2)(b)'s demeanor was that made him "uncooperative" other than not answering initial arrest processing questions.

The description § 87(2)(b) provided of the officer who spoke discourteously to him matches that of PO Brooks and not Sgt. Gebhard. Due to the statement captured in the BWC, this allegation has been pleaded to Sgt. Gebhard for the incident date of September 20, 2019, and will later be discussed in Allegation E for the incident date of September 22, 2019.

§ 87(2)(g)

Allegation (B) Abuse of Authority: On September 20, 2019, Sergeant James Gebhard forcibly removed § 87(2)(b) to the hospital.

On September 20, 2019, § 87(2)(b) urinated on the floor of the holding cell. Sgt. Gebhard made the determination that § 87(2)(b) needed to be removed from inside the 19th Precinct stationhouse holding cells and sent to the hospital. PO Ka Fung and Sgt. Brendan McGurran of the 19th Precinct assisted Sgt. Gebhard and PO Aridas in placing § 87(2)(b) in handcuffs and removing § 87(2)(b) from inside the holding cell. § 87(2)(b) was sat on a bench outside of the holding cell. § 87(2)(b) lit his shirt on fire with a lighter in his possession. EMS responded and § 87(2)(b) was removed to § 87(2)(b) Hospital.

§ 87(2)(b)'s narrative (Board Review 03) of what had occurred inside of the cell corresponded to the incident on September 22, 2019. § 87(2)(b) did not provide any information about what had occurred inside of the holding cell on September 20, 2019. The portion which corresponds with the incident on September 20, 2019, was that upon being removed from the holding cell, § 87(2)(b) sat on the bench outside of the holding cell and his right hand was handcuffed to the bench. There was an incident regarding a face mask (discussed in Allegations C and D). § 87(2)(b) wanted to be removed to the hospital because he was having difficulty breathing. § 87(2)(b) stated loudly that he wanted to go to the hospital. With his left hand, § 87(2)(b) removed a flint wheel lighter he had in his rear pants pocket and lit the bottom edge of his shirt on fire to be sent to the hospital more rapidly. § 87(2)(b) did not mention any incident during which he urinated in the holding cell.

At 00:47 minutes into Sgt. Gebhard's BWC video (Board Review 01), § 87(2)(b) is being handcuffed inside of the holding cell. Both rear handcuffs and leg shackles are placed on § 87(2)(b). Sgt. Gebhard says that § 87(2)(b) was not working with the officer by not allowing them to fingerprint or photograph him. Sgt. Gebhard informs § 87(2)(b) that they are removing him to a hospital. Sgt. Gebhard states that § 87(2)(b) threatened to punch him and slap another officer, and § 87(2)(b) says he did so because they were not letting him do what he wanted. § 87(2)(b) tells Sgt. Gebhard that he should "step up to [him]" when they are on the streets without his uniform, he knows who Sgt. Gebhard is, and he knows where he lives. Sgt. Gebhard states that § 87(2)(b) had urinated on the floor, cursed at Sgt. Gebhard, and threatening his life. Sgt. Gebhard states multiple times during the video that § 87(2)(b) urinated on the cell floor.

Sgt. Gebhard stated (Board Review 03) that while inside of the holding cell § 87(2)(b) was making threatening statements toward the officer who were in the stationhouse. Other than saying he would kill them, Sgt. Gebhard did not recall what the other statements § 87(2)(b) said. § 87(2)(b) did not inform any officer in the stationhouse that he needed to use the restroom. Sgt. Gebhard made the determination that § 87(2)(b) needed to be removed for a physiological evaluation because Sgt. Gebhard believed that § 87(2)(b)'s statements and act of urinating on the cell floor were not rational. He believed that if § 87(2)(b) remained in the holding cell the situation would escalate and he could harm himself.

Sgt. McGurran stated (Board Review 06) that he was the front desk sergeant at the 19th Precinct stationhouse and that § 87(2)(b)'s demeanor had been calm at the start of his tour. At some

point while inside the holding cell, § 87(2)(b) retrieved a lighter from somewhere on his person and lit his shirt on fire. § 87(2)(b) was not injured, and the lighter was confiscated in addition to a matchbook retrieved from inside the cuff of his sock. § 87(2)(b) asked to make a phone call to his son and after being informed that he could not make the call because he had been arrested for violating an order of protection, § 87(2)(b) began to yell and scream. Sgt. McGurran did recall what § 87(2)(b) was saying. § 87(2)(b) grabbed the bars of the holding cell door and began rattling it. Based on having lit his shirt on fire, and his overall demeanor, Sgt. McGurran believed that § 87(2)(b) was behaving in a manner in which he could have caused injury to himself or any officer who attempted to approach him.

PO Aridas stated (Board Review 05) that he was in the holding cell area processing § 87(2)(b)'s arrest. He did not have an independent recollection of § 87(2)(b)'s demeanor which inside of the holding cell, but that he noted in his memo book that § 87(2)(b) had been "uncooperative." PO Aridas did not recall specifically what made § 87(2)(b) uncooperative other than refusing to answer arrest processing questions. At no point while processing the arrest did § 87(2)(b) ask to use the restroom. PO Aridas did not recall whether he observed § 87(2)(b) urinating in the cell, but he saw a puddle of it on the floor of the cell. After he was removed from the holding cell and seated on a bench outside of the cell, § 87(2)(b) retrieved a lighter from somewhere inside of his body and lit his shirt on fire.

PO Fung stated (Board Review 07) that he had finished cleaning the juvenile room in the 19th Precinct and smelled smoke. He entered the holding cell area and § 87(2)(b) was seated on the bench outside of the holding cell. § 87(2)(b) had lit his shirt on fire. PO Fung observed urine on the cell floor. PO Fung did not recall having been in the cell assisting in restraining § 87(2)(b). PO Fung did not recall any details of when § 87(2)(b) was brought into the stationhouse or anything prior to when § 87(2)(b) lit his shirt on fire. PO Fung did not know why § 87(2)(b) was outside of the holding cell.

The Prehospital Care Report (See privileged documents) notes that § 87(2)(b) had placed a lighter "up his rectum" and lit his shirt on fire. Upon arrival of medical personnel, § 87(2)(b) was combative and continued to be combative while EMS removed him from the stationhouse by attempting to headbutt NYPD officers and EMS personnel.

§ 87(2)(g)
§ 87(2)(g)
Based on the comments which are captured on the BWC video, § 87(2)(g) § 87(2)(b) urinated on the cell floor. § 87(2)(b) Sgt. Gebhard's statement that § 87(2)(b) had made threatening statements toward him and other police officers due to the comments § 87(2)(b) made that he wanted to confront Sgt. Gebard when he was not on duty, in addition to the confirmation that he had made the threats to slap and punch officers because he was not being allowed to call his son. With the exception of Sgt. McGurran's statement, the officer statements all place the moment at which § 87(2)(b) lit his shirt on fire to have been after he was sat on the bench outside of the holding cell, which is corroborated with § 87(2)(b)'s statement.

According to the NYPD Patrol Guide, Section 221-13 (Board Review 08), an emotionally disturbed person (EDP) as an individual who appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to themselves or others. Officers may take emotionally disturbed persons into protective custody to prevent them from harming themselves or others.

According to the NYPD Patrol Guide, Section 210-04 (Board Review 23), any emotionally disturbed prisoner who has attempted suicide, is extremely violent, or exhibits other irrational behavior requires psychiatric treatment.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Allegation (C) Force: On September 20, 2019, Police Officer Donald Aridas used a chokehold against § 87(2)(b)

Allegation (D) Force: On September 20, 2019, Police Officer Donald Aridas restricted § 87(2)(b)'s breathing.

Allegation (E) Force: On September 20, 2019, Police Officer Donald Aridas used a non-lethal restraining device on § 87(2)(b)

It is undisputed that on September 20, 2019, § 87(2)(b) remained on the bench outside of the holding cell until the arrival of EMS. At some point while on the bench, a mask was placed on

§ 87(2)(b) § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b) stated (Board Review 03) that shortly after he was seated on the bench outside of the holding cell, PO Aridas alleged § 87(2)(b) had spit on him. § 87(2)(b) denied having spit on PO Aridas. PO Aridas grabbed the front of § 87(2)(b)'s neck with both of his hands to place a face mask on § 87(2)(b). The face mask was a hygienic face mask that hospital staff uses which covers the mouth and nose and wraps around an individual's ears. § 87(2)(b) began shaking his body left and right to pull away from PO Aridas. § 87(2)(b) bent his torso forward, so he was bent over to get away from PO Aridas. PO Aridas moved both of his hands from the front of § 87(2)(b)'s neck to the back of his neck. § 87(2)(b) told PO Aridas that he could not breathe because he suffered from asthma and the mask was inhibiting his breathing. Approximately 30 minutes later, EMS arrived and he was removed to the hospital.

PO Aridas stated (Board Review 05) that he did not recall whether it was before or after the incident with the urine, or whether it was after § 87(2)(b) was on the bench outside the cell that § 87(2)(b) began spitting at officers. PO Aridas' memo book noted that he was spat

upon (Board Review 09), but he did not have any independent recollection of having been spit on. PO Aridas did not recall how many times § 87(2)(b) spit. PO Aridas and other individuals assisted him with putting a spit guard on § 87(2)(b)'s face. PO Aridas did not recall who assisted him with the spit guard. PO Aridas was not able to recall what the spit guard looked like. § 87(2)(b) turned his body and his head side to side multiple times so that PO Aridas was not able to put the spit guard on § 87(2)(b)'s face. The officers assisting held onto various parts of § 87(2)(b)'s body and head. PO Aridas placed an open hand against § 87(2)(b)'s upper cheek and temple, and pushed his head away so that § 87(2)(b) would not be able to spit on him. PO Aridas placed the mask on his face. § 87(2)(b) moved his face so that the mask fell off his face. PO Aridas did not recall § 87(2)(b) mention asthma. PO Aridas denied doing so. PO Aridas denied that he or any officer placed both hands around the front of § 87(2)(b)'s neck. He denied he or any other officer placed both of their hands around the back of § 87(2)(b)'s neck. PO Aridas denied he used a chokehold against § 87(2)(b) or that he observed any other officer having done so. PO Aridas denied that any additional physical force was used against § 87(2)(b). PO Aridas denied that he performed any physical action that would have caused § 87(2)(b)'s breathing to be restricted. At approximately 5:30 p.m., EMS arrived at the 19th Precinct stationhouse.

Sgt. McGurran stated (Board Review 06) that § 87(2)(b) sat on the bench outside of the holding cell and stated that he did not want to be removed to the hospital. EMS arrived and § 87(2)(b) began spitting at the EMTs. EMS placed a spit shield on § 87(2)(b) with the assistance of PO Fung, PO Aridas, and himself. The shield which EMS used was made of plastic and it was placed on § 87(2)(b)'s chin, slanting upward to cover the area in front of his mouth. The shield did not make contact with any other place on § 87(2)(b)'s face other than his chin. PO Fung, PO Aridas, and Sgt. McGurran placed their hands on § 87(2)(b)'s legs so that he did not strike any of the EMTs with his legs. The EMS personnel were the only individuals who touched § 87(2)(b)'s face or neck area. § 87(2)(b) moved his head and shoulders side to side but did not do anything else with his body. § 87(2)(b) laid on his right side and moved his shoulders so that he was able to remove the face shield. Sgt. McGurran did not recall who, but an officer placed his hands on § 87(2)(b)'s left shoulder and held him so that he would not move. EMS personnel placed the face shield on § 87(2)(b)'s face. § 87(2)(b) told EMS that he was having difficulty breathing. EMS told § 87(2)(b) that the face shield was not making contact with his face, and that if he calmed down and stopped yelling, he would be able to breathe easier. § 87(2)(b) continued telling EMS that he could not breathe because of the face shield.

PO Fung stated (Board Review 07) that after he set his shirt on fire, § 87(2)(b) started screaming, spitting, and tried to bite PO Fung. § 87(2)(b) spat on PO Fung but did not know if § 87(2)(b) spat on anyone else. PO Fung did not recall who else was in the vicinity when § 87(2)(b) began spitting. PO Fung did not have an independent recollection of when the mask was first placed on § 87(2)(b). PO Fung did not remember if he assisted in initially placing the face mask on § 87(2)(b). § 87(2)(b) attempted to take the face mask off. At that point, PO Fung put his hands on § 87(2)(b)'s shoulder blade and turned § 87(2)(b) around so that § 87(2)(b) could not bite him. PO Fung did not remember placing his hands on any other part of § 87(2)(b)'s body. PO Fung denied that he made any contact with § 87(2)(b)'s neck or that any other officer did. At no point did an officer use a chokehold or

restrict § 87(2)(b)'s breathing. PO Fung did not recall at which point EMS arrived on scene, but they arrived at some point after § 87(2)(b) set his shirt on fire.

Sgt. Gebhard stated (Board Review 04) that he did not recall what had occurred between the time § 87(2)(b) was sat on the bench and when EMS arrived, but later in his interview stated that he did not recall whether he remained in the stationhouse until the arrival of EMS. Sgt. Gebhard did not recall whether he had any additional interactions with § 87(2)(b). Sgt. Gebhard did not recall whether § 87(2)(b) spat on an officer. Sgt. Gebhard did not recall having been informed that § 87(2)(b) had spat on an officer. Sgt. Gebhard did not recall whether an officer placed a mask on § 87(2)(b). Sgt. Gebhard denied that he grabbed § 87(2)(b) by the front of his neck with his hands. He denied observing any other officer do so. At no point during the incident did § 87(2)(b) complain to Sgt. Gebhard that he was having difficulty breathing. At no point during the incident did Sgt. Gebhard do anything to restrict § 87(2)(b)'s breathing nor did any officer in his presence. Sgt. Gebhard left the stationhouse and began his patrol.

Negative results for a TRI was obtained for this incident (Board Review 10).

Other than noting that § 87(2)(b) was removed to the hospital in the margin of his arrest entry, no additional information about this incident was noted in the command log (Board Review 11).

The Prehospital Care Report Summary (see privileged documents) note that the call from the NYPD to respond to the 19th Precinct stationhouse was made at 4:10:40 p.m., and EMS arrived at 5:03:37 p.m. Upon arrival § 87(2)(b) “continued to spit at NYPD officers and EMS crew.”

At the end of Sgt. Gebhard's BWC video (Board Review 01), Sgt. Gebhard instructs an officer to call the ambulance. The video ends at with the internal timestamp at 4:09:58 p.m.

Based on the information in the Prehospital Care Report Summary and the timestamp on the BWC, it was determined that the call for EMS to arrive at the location was made upon § 87(2)(b) having been sat on the bench. While § 87(2)(b) denied that he had spat during the incident, based on the officer statements and the medical documents, the investigation is crediting that § 87(2)(b) did spit during the incident. Due to the corroborating statements of § 87(2)(b), PO Fung, and PO Aridas, it was determined that § 87(2)(b) began spitting shortly after having been sat on the bench, although the exact time remains unknown. § 87(2)(b)'s account of the incident places EMS arriving on scene after the mask was placed on him and after he lit his shirt on fire which is corroborated by the medical documents, in addition to PO Fung's and PO Aridas' statements. Since PO Aridas admitted to placing the mask on § 87(2)(b) the allegation was pleaded against him. Sgt. McGurran's statement was the only one which placed EMS on scene at the time the mask was placed on § 87(2)(b).

According to NYPD Patrol Guide, Section 221-01 and 221-02 (Board Review 17), force may be used when it is reasonable to ensure the safety of a member of the service or a third person. In all circumstances, any application or use of force must be reasonable under the circumstances.

According to NYPD Patrol Guide, Section 205-10 (Board Review 22), an approach to

infection control is to treat all human blood and certain body fluids are to be treated as if they are known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), or other bloodborne pathogens. All efforts to avoid contact with these potentially infectious materials should be taken as well as utilizing whatever protective equipment is available.

The NYPD Patrol Guide does not provide any additional guidance for individuals spitting at police officers or the extent of which the police should assist EMS with donning any protective equipment on a civilian.

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED] § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Allegation (F) Discourtesy: On September 22, 2019, Police Officer Eneorji Brooks spoke discourteously to § 87(2)(b)

It is undisputed that on September 21, 2019, at approximately 1:00 p.m., § 87(2)(b) was discharged from the hospital and returned to the 19th Precinct stationhouse. § 87(2)(b) was placed in the 19th Precinct holding cell. § 87(2)(b) had been provided a soda bottle while he was in the holding cell. At approximately 2:00 a.m. on September 21, 2019, Det. Mullens was cleaning the holding cell and § 87(2)(b) was laying down on the bench inside of the holding cell. § 87(2)(b) stood up from his prone position. § 87(2)(b) and PO Brooks had a conversation. It remains in dispute whether during the conversation, PO Brooks or any other officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated (Board Review 03) that he had been provided a soda bottle by an officer earlier in the day and had it with him in the holding cell. He was laying down on the bench inside of the holding cell and stood up. An officer outside of the holding cell told § 87(2)(b) to sit down and to be quiet. § 87(2)(b) asked the officer how it was that he was supposed to sit when he needed to leave because he did not do anything wrong. The officer approached the cell and cursed out § 87(2)(b) was not able to provide any additional

information about what curse words the officer used. § 87(2)(b)'s description of the officer was a male with a brownish to dark complexion and a heavy build, approximately 200-220 pounds, short black hair, wearing a uniform.

PO Brooks is a 6'00" tall black male, who weighs approximately 250 lbs., and has black hair and brown eyes (Board Review 12). PO Brooks stated (Board Review 13) that officers at the stationhouse would often purchase sodas for arrested individuals in the holding cells to keep them occupied. § 87(2)(b) had requested a soda from an officer earlier, and it was provided. While § 87(2)(b) was in the holding cell, PO Brooks was at the computers in the holding cell area processing an arrest. While Det. Mullens was cleaning inside of the holding cell, § 87(2)(b) stood up from the bench and approached Det. Mullens. § 87(2)(b) began saying derogatory things about Det. Mullens' accent, but PO Brooks did not recall any specifics. PO Brooks approached the door of the cell area and told § 87(2)(b) to stop. § 87(2)(b) laid back down on the bench in the holding cell room and continued saying things about Det. Mullens but PO Brooks did not recall any specifics. PO Brooks told § 87(2)(b) that he was being disrespectful, and he was given a soda as a courtesy during the arrest process. PO Brooks told § 87(2)(b) that he did not deserve the soda that had been given to him. PO Brooks denied PO Brooks denied using any profane language. PO Brooks denied cursing at § 87(2)(b) prior to removing the soda bottle. PO Brooks denied any officer cursed at § 87(2)(b).

Det. Mullens stated (Board Review 14) that when he was sweeping inside of the holding cell, § 87(2)(b) stated that Det. Mullens' broom had touched his soda bottle. § 87(2)(b) sat up and he told Det. Mullens, "I'm going to fuck you up. Fuck you." Det. Mullens walked out of the cell area. PO Brooks did not say anything to § 87(2)(b). PO Brooks did not curse or use any profanity toward § 87(2)(b).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Force: On September 22, 2019, Police Officer Eneorji Brooks used physical force against § 87(2)(b)

Allegation (H) Force: On September 22, 2019, Detective Patrick Mullens used physical force against § 87(2)(b)

§ 87(2)(b) was in the 19th Precinct holding cell while Det. Mullens was cleaning inside of the cell. PO Brooks and Det. Mullens were the only two MOS in the holding cell area. § 87(2)(b) had a soda bottle on the floor of the cell beside the bench he was laying on. § 87(2)(b) stood up from the bench while Det. Mullens was still inside of the holding cell and PO Brooks instructed § 87(2)(b) to stop what he was doing. § 87(2)(b) laid back down on the bench. PO Brooks entered the holding cell to remove § 87(2)(b)'s soda bottle. PO

Brooks reached down and grabbed the soda bottle, and § 87(2)(b) reached down toward the soda bottle as well. § 87(2)(b), § 87(2)(g)

PO Brooks and § 87(2)(b) were engaged in a physical struggle and PO Brooks pushed § 87(2)(b) to the side so that § 87(2)(b) was in a corner of the holding cell, during which § 87(2)(b) was punched.

§ 87(2)(b) stated (Board Review 03) that he stood up from the bench and PO Brooks told him to be quiet and to sit down. § 87(2)(b) asked PO Brooks that how was he supposed to sit when he needed to leave because he did not do anything wrong. PO Brooks instructed Det. Mullens to remove the soda bottle, but Det. Mullens did not. PO Brooks entered the holding cell and approached § 87(2)(b). § 87(2)(b) did not know where Det. Mullens was because PO Brooks' body was in front of him. § 87(2)(b) denied having made contact with PO Brooks. PO Brooks grabbed the front of § 87(2)(b)'s shirt. PO Brooks dragged § 87(2)(b) by his clothing, toward a corner of the cell so that his back was toward a solid wall and his front was facing the gate. PO Brooks swept § 87(2)(b)'s feet with his legs and § 87(2)(b) fell forward. PO Brooks pushed § 87(2)(b) to the left, resulting in § 87(2)(b)'s left shoulder and left side of his facing making contact with the cell gate. § 87(2)(b)'s face was bruised as a result. § 87(2)(b) pushed himself off the gate, but he pushed himself backward enough that his tailbone hit the wall behind him. PO Brooks, holding § 87(2)(b) by his shirt, shook him. Det. Mullens approached and punched § 87(2)(b)'s upper chest. § 87(2)(b) did not recall how many times Det. Mullens punched him in the chest. Det. Mullens punched § 87(2)(b) in the face. § 87(2)(b) was not able to provide any details about where on his face he was punched, but that he knew he had been because at the hospital he saw a bruise on his face.

PO Brooks' memo book (Board Review 15) noted that there had been a holding cell incident when Det. Mullens' broom touched the soda bottle and § 87(2)(b) became angry. § 87(2)(b) "became aggressive," and PO Brooks entered the cell to remove the soda bottle. § 87(2)(b) grabbed PO Brooks' left forearm and they began to push and shove each other. PO Brooks threw a couple of punches to § 87(2)(b)'s body. Additional MOS entered the cell room and § 87(2)(b) was seated on the bench.

PO Brooks stated (Board Review 13) that Det. Mullens' broom touched § 87(2)(b)'s soda bottle. § 87(2)(b) stood up from the bench and approached Det. Mullens. § 87(2)(b) stood approximately one foot from Det. Mullens' face and said derogatory things about Det. Mullens' accent. PO Brooks did not recall any specifics. Det. Mullens took a step away from § 87(2)(b) and continued moving backwards toward the door of the cell. § 87(2)(b) stood in the middle of the cell and told Det. Mullens that if he saw him in the street, he would physically assault him. PO Brooks was concerned for Det. Mullens' safety because he was aware that § 87(2)(b) resided in the area and often had interactions with officers from the 19th Precinct. Once § 87(2)(b) laid down on the bench, he continued speaking to Det. Mullens in the same manner he had been previously, but PO Brooks was not able to provide specifics. PO Brooks told § 87(2)(b) that he was being disrespectful, and he was given a soda as a courtesy and he did not deserve the soda. Det. Mullens exited the holding cell area. As PO Brooks grabbed the soda bottle, § 87(2)(b) sat up and grabbed PO Brooks' left forearm with one of his hands. PO Brooks pushed § 87(2)(b) away from him. § 87(2)(b) approached PO Brooks and PO

Brooks, with both of his hands, grabbed the front chest area of § 87(2)(b)'s shirt. § 87(2)(b) grabbed ahold of the front of PO Brooks' clothes. PO Brooks pushed § 87(2)(b) to the side because § 87(2)(b) was moving his hands trying to gain leverage on PO Brooks. § 87(2)(b) was pushing against PO Brooks. PO Brooks told § 87(2)(b) to sit down but § 87(2)(b) did not. PO Brooks punched § 87(2)(b) approximately three to four times at the front of § 87(2)(b)'s torso. PO Brooks believed that his punches made contact with § 87(2)(b)'s front shoulder, front chest, and rib area. PO Brooks denied that he punched § 87(2)(b) in the face. § 87(2)(b) sat down, held his face in his hands, dropped his hands, and stood up again. § 87(2)(b) placed his hands against PO Brooks' chest and pushed him. PO Brooks grabbed § 87(2)(b) and moved along the side of the holding cell. § 87(2)(b) was pressed against the front cell wall. PO Brooks and § 87(2)(b) moved back toward the corner of the holding cell's back wall. PO Brooks attempted to sweep § 87(2)(b)'s legs with his own legs in order to place § 87(2)(b) on the ground but PO Brooks did not recall whether he made contact with § 87(2)(b)'s lower body. Det. Mullens entered the cell and PO Brooks stepped away from § 87(2)(b). PO Brooks was in physical contact with § 87(2)(b) for approximately 30 seconds. Det. Mullens stood between PO Brooks and § 87(2)(b). Det. Mullens placed his hand flat on § 87(2)(b)'s chest and another hand on PO Brooks and pushed both of them apart. Other than the contact Det. Mullens made with § 87(2)(b) no other officer made any contact with § 87(2)(b). PO Brooks did not see any other officer make any physical contact with § 87(2)(b). Separating PO Brooks and § 87(2)(b) lasted approximately five seconds. § 87(2)(b) sat down on the bench inside of the holding cell. PO Brooks used only the force needed to gain compliance. PO Brooks did not recall § 87(2)(b)'s face or left shoulder making contact with any cell wall. § 87(2)(b) did not complain about any pain to his face or left shoulder. PO Brooks did not observe any injury to his shoulder or face, or to any anywhere else on § 87(2)(b).

Det. Mullens stated (Board Review 14) that when he was sweeping the cell, § 87(2)(b) told Det. Mullens that his broom had touched his soda bottle. § 87(2)(b) sat up and he told Det. Mullens, "I'm going to fuck you up. Fuck you." Det. Mullens walked out of the cell and remained in the holding cell area. PO Brooks entered the holding cell and § 87(2)(b) began saying something about his soda bottle and that he was going to "fuck up" PO Brooks and his family. PO Brooks later informed Det. Mullens that § 87(2)(b) grabbed ahold of him, but Det. Mullens did not observe the initial contact between PO Brooks and § 87(2)(b). PO Brooks and § 87(2)(b) became involved in a physical altercation but Det. Mullens was not able to provide any details. Det. Mullens entered the holding cell and § 87(2)(b) was standing in the middle of the room. PO Brooks and § 87(2)(b) no longer were physically engaged but Det. Mullens did not recall how they separated. § 87(2)(b) told Det. Mullens that he was going to throw his drink and urine on Det. Mullens. § 87(2)(b) told Det. Mullens that he was going to spit on him. Det. Mullens was not able to see § 87(2)(b)'s hands. Det. Mullens extended his arm up and in front of himself to keep § 87(2)(b) away. Det. Mullens did not recall if his hand was in a fist or if it was open. Det. Mullens' hand was outstretched toward § 87(2)(b) and was in the vicinity of § 87(2)(b)'s face. Det. Mullens did not recall whether he touched § 87(2)(b) but that it was possible his hand made contact with § 87(2)(b)'s face. Det. Mullens denied that he or any other officer punched § 87(2)(b). Det. Mullens denied using any additional physical force against § 87(2)(b). § 87(2)(b) became quiet and laid down on the bench until EMS arrived.

A TRI noted (Board Review 16) that § 87(2)(b) grappled, shoved, and pushed PO Brooks. It noted that PO Brooks used hand strikes and a forcible take-down in self-defense and in defense of other MOS to overcome resistance or aggression. § 87(2)(b) suffered from minor contusions, but the location was unspecified.

Medical documents (see privileged documents) noted that at approximately 8:00 a.m. on § 87(2)(b), § 87(2)(b) had a bruise on the left side of his face. An x-ray yielded negative results for any fractures.

§ 87(2)(g)
§ 87(2)(b) PO Brooks entered the holding cell to remove the soda bottle after Det. Mullens was no longer in the cell. § 87(2)(b) stood up from laying down on the bench as PO Brooks was grabbing the soda bottle. PO Brooks grabbed the front of § 87(2)(b)'s body and pushed him inside of the holding cell. PO Brooks punched § 87(2)(b) multiple times and they made contact on the front of § 87(2)(b)'s torso. § 87(2)(b) did not strike PO Brooks. PO Brooks attempted to use his feet to perform a takedown of § 87(2)(b). PO Brooks released § 87(2)(b) and EMS was called. Approximately six hours after the incident, at the hospital § 87(2)(b) had a bruise on the left side of his face.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g) Based on the medical documents which noted that approximately six hours after the incident § 87(2)(b) had a bruise on the left side of his face, § 87(2)(g)

§ 87(2)(g)
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§ 87(2)(g)

According to NYPD Patrol Guide, Section 221-01 and 221-02 (Board Review 17), force may be used when it is reasonable to ensure the safety of a member of the service or a third person. When appropriate and consistent with personal safety, an officer will use de-escalation techniques. In all circumstances, any application or use of force must be reasonable under the circumstances. In determining whether the use of force is reasonable, members of the service should consider the following: the nature and severity of the circumstance, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm, number of subjects in comparison to the number of MOS, the condition of the subject in comparison to the MOS, and whether the subject is attempting to evade arrest.

§ 87(2)(b), § 87(2)(g)
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§ 87(2)(g)
§ 87(2)(b) did not take any other physical action toward PO Brooks nor did he strike at PO Brooks.

During § 87(2)(b)'s statement, he provided two possible causes to the bruise to the left side of his face, PO Brook having pushed him against the cell wall and an officer having punched him in the face. § 87(2)(b), § 87(2)(g)

§ 87(2)(b). While PO Brooks did not recall having pushed § 87(2)(b)'s left side against a cell wall, he did state that he pushed and dragged § 87(2)(b) along the cell walls. In addition, PO Brooks stated that he had punched § 87(2)(b) although he denied that his punches made contact with § 87(2)(b)'s face. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(g)
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§ 87(2)(g) while PO Brooks and § 87(2)(b)
§ 87(2)(b), § 87(2)(g)
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§ 87(2)(g)

Civilian and Officer CCRB Histories

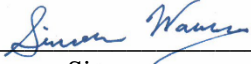
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 18).
- Sgt. Gebhard has been a member-of-service for 13 years and has been a subject in four prior CCRB complaints and 11 allegations, none of which were substantiated. § 87(2)(g)
- PO Aridas has been a member-of-service for 15 years and has been a subject in seven prior CCRB complaints and 9 allegations, none of which were substantiated. § 87(2)(g)

- PO Brooks has been a member-of-service for 10 years and has been a subject in one prior CCRB complaints and one allegation, which was not substantiated. § 87(2)(g)
- Det. Mullens no longer is a member-of-service. He had been a subject in five prior CCRB complaints and nine allegations, of which three were substantiated:
 - 200509214 involved substantiated allegations of force, refusal to provide name/shield, and threat of arrest against Det. Mullens. The NYPD imposed instructions.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
 - According to the Office of Court Administration (OCA) § 87(2)(b)
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- As of April 14, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Reviews 20 and 21).

Squad No. 15

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| Investigator: | <u>Valentina Concha-Toro</u> Signature | <u>Inv. Valentina Concha-Toro</u> Print Title & Name | <u>August 26 2021</u> Date |
| Squad Leader: | <u></u> Signature | <u>IM Simon Wang</u> Print Title & Name | <u>_08/26/21_</u> Date |
| Reviewer: | _____ Signature | _____ Print Title & Name | _____ Date |